

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

May 17, 2004

CALL TO PODIUM:

Tony Tomasello, Assistant City Manager

RESPONSIBLE STAFF:

Tony Tomasello, Assistant City Manager

Cindy Hines, Olde Towne Coordinator

AGENDA ITEM:

(please check one)

<input type="checkbox"/>	Presentation
<input type="checkbox"/>	Proclamation/Certificate
<input type="checkbox"/>	Appointment
<input type="checkbox"/>	Public Hearing
<input type="checkbox"/>	Historic District
<input type="checkbox"/>	Consent Item
<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	Resolution
<input checked="" type="checkbox"/>	Policy Discussion
<input type="checkbox"/>	Work Session Discussion Item
<input type="checkbox"/>	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	03-15-04
Advertised	04-07-04
Hearing Date	04-19-04
Record Held Open	10 days
Policy Discussion	

TITLE:

An Ordinance to Enact New Chapter 6B of the City Code, Entitled "Gaithersburg Arts and Monuments Funding Corporation, Inc.," so as to Authorize the Creation of a Fundraising Organization for the City of Gaithersburg to Heighten Awareness of and Seek Support for Arts and Revitalization Initiatives within the City of Gaithersburg and Incorporation Thereof.

SUPPORTING BACKGROUND:

The Gaithersburg Arts and Monuments Funding Corporation, Inc. is being established to heighten awareness of and seek support for revitalization and arts initiatives within the City of Gaithersburg.

The corporation's activities will include:

- Identifying, organizing, promoting and managing fundraising activities for City approved project/programs
- Establishing donor contacts
- Accounting for donated funds
- Creating and distributing promotional/informational material

The Gaithersburg Arts and Monuments Funding Corporation members will work closely with the following established City committees: Art in Public Places, Gaithersburg Cultural Arts Advisory Committee and the Olde Towne Advisory Committee.

A Public Hearing was held on April 19, 2004 and the record was closed on May 3, 2004. No additional correspondence was received.

Attached for your review are the Articles of Incorporation and Bylaws for the Gaithersburg Arts and Monuments Funding Corporation. These documents have already been reviewed by the City Attorney.

Upon adoption, the ordinance enacting Chapter 6B of the City Code takes 20 days to go into effect. Once the ordinance is in effect, the public will be given 30 days to comment on both the Articles of Incorporation and the Bylaws. During that 30-day period, nominations for board members will be accepted.

DESIRED OUTCOME:

Adoption of Ordinance.

ORDINANCE NO. _____

AN ORDINANCE TO ENACT NEW CHAPTER 6B OF THE CITY CODE, ENTITLED "GAITHERSBURG ARTS AND MONUMENTS FUNDING CORPORATION, INC.," SO AS TO AUTHORIZE THE CREATION OF A FUNDRAISING ORGANIZATION FOR THE CITY OF GAITHERSBURG TO HEIGHTEN AWARENESS OF AND SEEK SUPPORT FOR ARTS AND REVITALIZATION INITIATIVES WITHIN THE CITY OF GAITHERSBURG AND INCORPORATION THEREOF

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, in public meeting assembled, that new Chapter 6B of the City Code, titled "Gaithersburg Arts and Monuments Funding Corporation, Inc.," is hereby enacted to read as follows:

Chapter 6B

Gaithersburg Arts and Monuments Funding Corporation, Inc.

- § 6B-1. Definitions
- § 6B-2. Findings; General Intent
- § 6B-3. Gaithersburg Arts and Monuments Funding Corporation, Inc.; General, Creation and Purposes/Services
- § 6B-4. Funding
- § 6B-5. Board of Directors of Corporation; Employees; Other Organizational Matters
- § 6B-6. Gaithersburg Arts and Monuments Funding Corporation, Inc. – Powers
- § 6B-7. Annual Report and Accounting
- § 6B-8. Termination of Gaithersburg Arts and Monuments Funding Corporation, Inc.; Dissolution

Sec. 6B-1. Definitions.

For purposes of this chapter, the following terms have the meanings indicated:

- (a) *Board of directors* means the board of directors of Gaithersburg Arts and Monuments Funding Corporation, Inc., as created and specified herein.
- (b) *City* means the City of Gaithersburg, Maryland.
- (c) *City Manager* means the manager of the City of Gaithersburg, Maryland or his authorized designee.
- (d) *Corporation* means, the Gaithersburg Arts and Monuments Funding Corporation, Inc., created under section 6B-3.

- (e) *Department* means a City department, principal office, or other office that the City Council designates to perform functions under this chapter. Department does not include the Gaithersburg Arts and Monuments Funding Corporation, Inc.

Sec. 6B-2. Findings; General Intent.

- (a) The Gaithersburg Arts and Monuments Funding Corporation, Inc. is being established to heighten awareness of and provide support for revitalization and arts initiatives, projects and programs within the City of Gaithersburg. The City's revitalization program, as set forth in the Strategic Action and Downtown Plan, seeks to establish the Olde Towne Central Business (OTCBD) district as the civic, social and cultural heart of the City. The organization's broad-based focus serves to benefit arts programs, projects and initiatives throughout the City. The activities of the organization will include:
 - (1) Identifying, organizing, promoting and managing fundraising events for City approved projects/programs;
 - (2) Establishing donor contacts;
 - (3) Accounting for donated funds;
 - (4) Creating and distributing promotional/informational material.
- (b) The corporation hereinafter created will, in cooperation with and with the support of the City, provide an administrative, regulatory and financial framework through which to accomplish these goals.

Sec. 6B-3. Gaithersburg Arts and Monuments Funding Corporation, Inc.; General, Creation and Purposes/Services

- (a) General. The Gaithersburg Arts and Monuments Funding Corporation, Inc. may be created under this section for the benefit of Gaithersburg arts and revitalization programs, projects and initiatives. The corporation created under this section is a public instrumentality of the City. The corporation is not within the executive or legislative branches of the City government, is separate and distinct from the City, and is an independent entity. To the extent not inconsistent with this section or Article 23A of the Maryland Code, the corporation may exercise all powers and is subject to all requirements applicable to nonstock corporations under the Corporations & Associations Article of the Maryland Code. The corporation performs tasks of benefit to the government and the public generally.
- (b) Creation
 - (1) The Gaithersburg Arts and Monuments Funding Corporation, Inc. shall hereafter be created and incorporated, as provided by applicable laws, to

undertake those functions and duties, and exercise that authority as provided by this chapter, and the corporation charter and bylaws for that area identified in section 24-160F.3 of this Code.

- (2) The corporation shall be empowered to enter into written agreements to effect the general goals and intent of this chapter, but is not empowered to encumber any assets or revenue of the City.
- (3) The corporation may be created by the adoption of a resolution by the City Council. The public must be given at least thirty (30) days to comment on the proposed articles of incorporation and bylaws before the council adopts the resolution. The resolution must approve articles of incorporation that state the:
 - (A) Name of the corporation;
 - (B) Names, addresses and terms of office of the first directors of the corporation;
 - (C) Location of the principal office of the corporation;
 - (D) Purposes for which the corporation is formed; and
 - (E) Powers of the corporation, subject to the restrictions or limitations on the powers of the corporation in this section and in Article 23A and the Corporations & Associations Article of the Maryland Code.
- (4) The resolution adopted under paragraph (1) must also approve proposed bylaws for the corporation that include provisions required under section 6B-5.
- (5) The City Manager or any other person designated in the resolution adopted under paragraph (1) must execute and file the articles of incorporation for recording with the State Department of Assessments and Taxation. When the articles of incorporation are accepted for recording by the Department of Assessments and Taxation, the corporation becomes a body corporate, lawfully and properly created and authorized to exercise its powers.
- (6) The City Council may amend the articles of incorporation by resolution. Any amendment must be filed and recorded with the State Department of Assessments and Taxation. A copy of the articles of incorporation and any amendment must be filed with the City Manager.

- (7) Amended articles of incorporation must be filed and recorded with the State Department of Assessments and Taxation. A copy of the amended articles of incorporation must be filed with the City Manger.

(c) Purposes/Services

- (1) Identifying, organizing, promoting and managing fundraising events for City approved projects/programs;
- (2) Establishing donor contacts;
- (3) Accounting for donated funds;
- (4) Creating and distributing promotional/informational material.
- (5) Such other services as may be detailed in the charter of the corporation.

Sec. 6B-4. Funding.

(a) The corporation may solicit the following sources of funding:

- (1) Gifts, grants, donations and bequests;
- (2) Any federal or state funded, insured or guaranteed grant;
- (3) Membership fees or annual dues charged to voluntary members of the corporation; and
- (4) Any other funding mechanism authorized by law.

(b) Funds or in-kind services received from the City of Gaithersburg can only be used for administrative activities.

(c) Funding restrictions.

- (1) The corporation may not pledge or encumber the assets or general revenues of the City.
- (2) Subject to the limitations and restrictions set forth in this chapter, and notwithstanding any other law, ordinance, charter, or bylaw to the contrary, the corporation may borrow funds for authorized purposes only if approved by resolution of the City Council.

(d) Use of funds. The corporation must use funds obtained under this section only:

- (1) For the purposes of the corporation, as set forth in section 6B-3 and as may be restricted in section 6B-4(b) and (c), of this chapter.

Sec. 6B-5. Board of directors of corporation; employees; other organizational matters.

- (a) Appointment and confirmation of board of directors. Except as otherwise provided in the resolution creating or amending the charter of the corporation, the board of directors of the corporation has no less than six (6) members. Members are appointed by the mayor and confirmed by the City Council. The mayor must appoint the members of the board of directors so that:
 - (1) One (1) member is, at the time of their appointment, a member of the Olde Towne Advisory Committee and shall serve a three (3) year term;
 - (2) One (1) member is, at the time of their appointment, a member of the Arts in Public Places Committee and shall serve a three (3) year term;
 - (3) One (1) member is, at the time of their appointment, a member of the Gaithersburg Cultural Arts Advisory Committee and shall serve a three (3) year term;
 - (4) Two (2) members are At-Large members capable of representing arts and revitalization interests and each shall serve a two (2) year term;
 - (5) One or more are ex-officio, non-voting members. The Mayor may serve as an ex-officio or designate one or more members of the City Council to serve in that capacity.
- (b) Removal. The mayor, with the approval of the City Council, may remove a member of the board of directors for malfeasance, misfeasance, or nonfeasance or other reason specified in the bylaws of the corporation.
- (c) Duties. The board of directors shall direct all aspects of the program, management and finances of the corporation.
- (d) Compensation; relation to City retirement system.
 - (1) A member of the board of directors shall serve without compensation.
 - (2) Members of the board of directors appointed pursuant to section 6B-5(a)(1), (2), (3) and (4) are not employees, and are not eligible to receive benefits under the City retirement system for services rendered as a board member.

(e) Procedures, attendance and ethics.

- (1) The board of directors may establish its own rules of procedure. These rules may be included in the bylaws of the corporation. The board may adopt a rule that allows for removal of a member by the Mayor, upon recommendation of the board, because of failure to attend meetings or other reasons.
- (2) Members of the board of directors appointed pursuant to section 6B-5(a)(1), (2), (3), and (4) are not subject to Chapter 7A (Ethics), but must comply with all bylaws pertaining to ethical conduct by the board of directors approved by the City Council under subsection (f) of this section.

(f) Bylaws.

- (1) At the organizational meeting of the board of directors, required under Section 2-109 of the Corporations & Associations Article of the Maryland Code, the board must adopt the bylaws approved by the City Council under section 6B-3. Any later proposed amendment to the bylaws must be submitted to the City Council for approval at least sixty (60) days before the board of directors takes final action on the amendment. All bylaws must be filed with the City Manager within five (5) working days of adoption.
- (2) The bylaws may contain any provision not inconsistent with law or the articles of incorporation of the corporation to regulate and manage the affairs of the corporation. The bylaws must contain provisions that:
 - (A) Protect against any conflict of interest or similar impropriety by members of the board of directors or the executive director or any other employees, including self-dealing and collusive practices. This requirement includes a provision for the disclosure of a financial or similar interest of any person in any matter before the corporation and the establishment of conditions under which that person is disqualified from participating in decisions or other actions in which there is a conflict between the person's official duties and private interests. Appropriate remedies against violation, including removal or termination, must be provided.
 - (B) Provide for competitive procurement for goods and services.
 - (C) Provide for surety bonds or similar instruments to protect against misappropriation of funds by directors or employees of the corporation responsible for the handling of corporation funds.

- (g) Committees. The board of directors may be supported by committees which oversee the management of other functions of the corporation. Each committee

will have a board member serving as a liaison and can include persons who are not on the board of directors.

- (h) City staff assistance. The City Manager may designate City employees to assist the board of directors. Such employees shall not be deemed to be employees of the corporation.
- (i) Executive director; agents and employees. The board of directors may engage an executive director with substantial experience in managing the affairs of the corporation. In lieu of an Executive Director, a City staff member may assume all powers and duties that may be delegated to the Executive Director from time to time within the bylaws. The board may employ, or contract with, other persons to assist in carrying out the corporation's functions. An employee of the corporation is not a City employee under Chapter 17 (Personnel) nor a public employee for purposes of Chapter 7A (Ethics). An employee of the corporation must not participate in or receive benefits from the City retirement system for service as an employee with the corporation.
- (j) Insurance. The corporation must secure reasonable and appropriate insurance for its activities.
- (k) Publicity. The Gaithersburg Arts and Monuments Funding Corporation, Inc. may publicize its activities through newsletters or other media. It may sell advertising in its publications, as well as the sale of souvenirs or other promotions.

Sec. 6B-6. Gaithersburg Arts and Monuments Funding Corporation, Inc. -Powers.

- (a) Powers. To further its statutory purposes, but subject to the limitations in subsection (b) of this section, the corporation may:
 - (1) Acquire, hold and use personal property and other property rights necessary to achieve its purposes, including acquisition by purchase, lease or license;
 - (2) Make contracts, including employment contracts and contracts for goods and services;
 - (3) Sue, and be sued;
 - (4) Accept grants, gifts or other contributions;
 - (5) Establish commercial bank accounts, with any earnings on funds inuring to the corporation; and
 - (6) Take other necessary or convenient actions.

- (b) Limitations. The corporation may not:
- (1) Pledge the full faith and credit of the City;
 - (2) Issue bonds or notes;
 - (3) Exercise any police or general power of the City, except those expressly authorized by law;
 - (4) Exercise the power of eminent domain;
 - (5) Lease any property as tenant for a term of years beyond the date of termination of the corporation.
- (c) Applicability of City procurement policies.
- (1) The requirements of the City Charter do not apply to procurement by the corporation. The corporation must submit a report to the Mayor and City Council by September 1 of each year, describing achievement of those goals in the prior fiscal year.
 - (2) The corporation should participate in the City cooperative purchasing program to the fullest extent practicable and cost effective.
- (d) City not liable; suits by corporation against City prohibited; styling of suits by or against the corporation; City Attorney.
- (1) The City, its officers, employees and agents are not liable, in contract or tort, for any obligation, act or omission of the corporation or its agents or employees. Any contract executed by the corporation must state that the City, its officers, employees and agents are not liable for any obligation of the corporation under the contract.
 - (2) The corporation or its employees and contractors may not sue the City as plaintiff.
 - (3) A lawsuit brought by or against the corporation must specifically name the corporation.
 - (4) The City Attorney is the legal advisor to the corporation and must be notified of any legal action by or against the corporation. This paragraph does not prohibit the corporation from hiring additional legal counsel approved by the City Attorney.

Sec. 6B-7. Annual Report and Accounting

Annual report. The corporation must maintain its books, accounts and records, and shall file with the Mayor and City Council of Gaithersburg, an annual report at the end of its fiscal year. The Corporation will also, in conjunction with the City's Director of Finance, submit an accounting of all corporation funds and a listing of the location thereof. The time for submission of the annual report and accounting shall be specified by the City Manager. All books and records of the Corporation may be inspected by any director and by any authorized employee or auditor of the City of Gaithersburg at any reasonable time, upon request to the Executive Director.

Sec. 6B-8. Termination of the Gaithersburg Arts and Monuments Funding Corporation, Inc.

- (a) Articles of dissolution must be filed and recorded with the State Department of Assessments and Taxation. A copy of the articles of dissolution must be filed with the City Manager.
- (b) When the corporation terminates, all contracts and services must terminate unless expressly assumed and maintained by the City.
- (c) Dissolution of the corporation is governed by Section 5-208 of the Corporations & Associations Article of the Maryland Code. Subsequent to any restriction on individual donations as agreed to by the board of directors, any assets remaining after all liabilities and obligations of the corporation are satisfied must be distributed to the City government.
- (d) Notwithstanding anything to the contrary contained in this section, the corporation may be terminated at any time after adoption of a resolution by a super-majority of the City Council (i.e., four (4) members) if the corporation has been operated in an ultra vires manner, or in the event of misfeasance, malfeasance or nonfeasance by the board of directors. Termination and dissolution is governed by subsections (c) and (d) of this section.

ADOPTED this 17th day of May, 2004, by the City Council of Gaithersburg, Maryland.

SIDNEY A. KATZ, MAYOR and
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this 17th day of May, 2004. APPROVED by the Mayor of the City of Gaithersburg, Maryland this 17th day of May, 2004.

SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the 17th day of May, 2004, and the same was approved by the Mayor of the City of Gaithersburg on the 17th day of May, 2004. This ordinance will become effective on the 7th day of June, 2004.

DAVID B. HUMPTON, City Manager

ARTICLES OF INCORPORATION
OF
GAITHERSBURG ARTS AND MONUMENTS FUNDING CORPORATION, INC.

A Nonprofit Corporation

I, Sidney A. Katz, Mayor of the City of Gaithersburg, Maryland, 31 S. Summit Avenue, Gaithersburg, MD 20877, being at least eighteen (18) years of age, hereby form a Corporation under and by virtue of the General Laws of the State of Maryland and Section 6B, Gaithersburg City Code.

ARTICLE I. NAME

The name of the Corporation (which is hereinafter referred to as the "Corporation") is the

Gaithersburg Arts and Monuments Funding Corporation, Inc.

ARTICLE II. DURATION

The period of duration of the Corporation shall be perpetual, provided, however, that the Corporation shall cease to exist:

- A. Upon resolution of the Gaithersburg City Council, as provided in Chapter 6B, §6B-8, Gaithersburg City Code; and
- B. Upon dissolution as provided above, Articles of Dissolution shall be filed with the Maryland State Department of Assessments and Taxation.

ARTICLE III. PURPOSES

Section 1. No part of the funds or revenue of the Corporation shall inure to the benefit of or be distributable to its directors, officers or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance, of the purposes set forth in Article III hereof.

Section 2. The Corporation shall at all times conduct its financial and other affairs so as to retain its status as a non-taxable corporation organized to fulfill the purposes set forth in these Articles. The Corporation shall to the fullest extent possible under law, conduct its affairs in a manner consistent with the tax-exempt status of organizations under the Internal Revenue Code of 1986, and subsequent revisions of the federal tax laws, as is required to maintain the tax-exempt status of the Corporation.

Section 3. The Corporation is organized and shall be operated exclusively as a nonstock charitable organization. Included among the purposes for which the Corporation is organized under the authority of Chapter 6B, Gaithersburg City Code, are:

- (1) Provide support to the City of Gaithersburg, Maryland;
- (2) Heighten awareness of and seek support for revitalization and arts initiatives within the City of Gaithersburg;
- (3) To raise funds and use those funds for revitalization and arts programs and capital projects approved by the Mayor & City Council, the City Manager or their designee. All funds must be used within the City of Gaithersburg;
- (4) Identify, organize, promote and manage fundraising events for City approved revitalization, arts programs and capital projects;
- (5) Establish donor contacts;
- (6) Account for donated funds;
- (7) Create and distribute promotional/informational material;
- (8) Prepare sponsorship and naming rights packages, for approval by the Mayor and City Council, in support of capital projects;
- (9) Perform all other related duties as determined from time to time by the board of directors.

Section 4. The Corporation shall be nonpartisan, nonsectional and nonsectarian. It shall take no part in, or lend its support to any individual candidate for public office, or to any political party.

Section 5. The purposes for which the Corporation is organized are exclusively religious, charitable, scientific, literary or educational within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States Internal Revenue Law.

ARTICLE IV. POWERS

In furtherance of the foregoing purposes and objectives, and subject to the restrictions set forth in Article V, and in Chapter 6B, Gaithersburg City Code and other applicable laws, the Corporation shall have and may exercise all of the powers and is subject to all requirements applicable to nonstock corporations under the Corporations and Associations Article of the Maryland Code. The Corporation may do everything necessary or convenient for the accomplishment of any of the corporate purposes, either alone or in connection with other organizations, entities or

individuals, and either as principal or agent, subject to such limitations as are or may be prescribed by law or contained in this Charter. The Corporation may:

Section 1. Acquire, hold, and use personal property and other property rights necessary to achieve its purposes, including acquisition by gift, bequest, purchase or lease;

Section 2. Make contracts, including employment contracts and contracts for goods and services;

Section 3. Sue and be sued;

Section 4. Accept grants, gifts, or other contributions, subject to any restrictions attached to it by any donor. The Corporation reserves the right to reject any donation if its use would not conform to the Corporation's Charter or meet with City approval;

Section 5. Establish commercial bank and brokerage accounts, with any earnings on funds inuring to the Corporation;

Section 6. Borrow funds which are not secured by the full faith and credit or any property or assets of the City;

Section 7. Exercise any powers set forth in Chapter 6B of the Gaithersburg City Code;

Section 8. Take other necessary or convenient actions.

ARTICLE V. RESTRICTIONS ON POWERS

Section 1. The Gaithersburg City Council may amend the Corporation's Articles of Incorporation by adopting a resolution in accordance with Chapter 6B, Gaithersburg City Code.

Section 2. The Corporation's financial records must be open to inspection by the City Manager or his authorized designee.

Section 3. The Corporation must not:

- (1) Pledge the full faith and credit of the City;
- (2) Issue bonds and notes;
- (3) Exercise any police or general power of the County, except those expressly authorized by law;
- (4) Exercise the power of eminent domain;
- (5) Lease any property as tenant of a term of years beyond the date of termination of the Corporation;

- (6) Encumber any assets or revenue of the City in excess of the amounts budgeted or appropriated for the Corporation by the City;
- (7) Sue the City, its officers, employees, departments or agents as plaintiff.

Section 4. Upon winding up and dissolution of this Corporation, after paying or adequately providing for the liabilities and obligations of the Corporation, the remaining assets shall be distributed to the City of Gaithersburg, or, if such city is not in existence at the time of dissolution, then to one or more organizations which themselves are exempt as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986 or corresponding sections of any prior or future Internal Revenue Code, or to the Federal, State or local government for exclusive public purpose.

Section 5. Notwithstanding any other provision of these Articles, this Corporation shall not carry on any activities not permitted to be carried on by an organization exempt from Federal income tax under section 501(c)(3) of the Internal Revenue code of 1986 or the corresponding provision of any future United States Internal Revenue Law.

ARTICLE VI. REGISTERED AGENT AND OFFICE

The post office of the principal office of the Corporation is Gaithersburg City Hall c/o City Manager, 31 South Summit Avenue, Gaithersburg, MD 20877. The name of the Registered Agent of the Corporation in this State is David B. Humpton, whose address is 31 S. Summit Avenue, Gaithersburg, MD 20877. Said Agent is a citizen of, and actually resides in, the State of Maryland.

ARTICLE VII. MANAGEMENT/DIRECTORS

Section 1. Board of Directors. The management of the affairs of the Corporation shall be vested in the board of directors, which shall consist of no less than six (6) members, except as otherwise provided in Chapter 6B of the Gaithersburg City Code. The directors shall be appointed by the Mayor of the City of Gaithersburg, confirmed by the City Council and shall serve for those terms as provided under Chapter 6B, of the City Code. The manner of selection, appointment, term of service and removal of directors is determined according to Chapter 6B, Gaithersburg City Code.

Section 2. Initial Directors. The names and addresses of the initial directors, who shall act until their successors are duly appointed and qualify, are:

[Names forthcoming]

Section 3. Organizational Meeting. The organizational meeting of the board of directors required under Section 2-109, Corporations and Associations Article, Maryland Code, shall be called by a majority of directors appointed under these articles.

Section 4. Directors as Members. For purposes of any law or rule relating to members of a nonstock corporation, the directors of the Corporation (1) also constitute the members of the Corporation; and (2) when meeting as directors, may exercise the rights and powers of members.

Section 5. Except as provided below, and the extent permitted by Maryland law, the Corporation shall indemnify and hold harmless each of its directors and officers against any and all expenses and liabilities, including attorney's fees, actually and necessarily incurred by him or her in connection with the defense of any action, suit, or proceeding, civil, criminal, administrative or investigative, in which he or she is made a party by reason of his or her being or having been a director or officer of the Corporation (whether or not a director or officer at the time such expenses or liabilities are imposed or incurred by him or her) except in relation to matters as to which he or she shall be adjudged to be liable for willful misconduct, gross neglect of duties, or criminal acts in the performance of his or her duties as director or officer of the Corporation. In the event of settlement of such actions, suit or proceeding without adjudication, indemnity shall include reimbursement of amounts paid in settlement and expenses actually and necessarily incurred, including attorneys' fees, by such director or officer in connection therewith, but such indemnifications shall be provided only if the Corporation is advised by its counsel that it is the opinion of such counsel that (1) such settlement is for the best interest of the Corporation and (2) the director or officer conducted himself or herself in good faith and reasonably believed that this conduct was in the best interests of the Corporation and, with respect to a criminal proceeding, the director or officer had no reasonable cause to believe his or her action was unlawful. Such right of indemnification shall not be deemed exclusive of any other right or rights to which the director or officer may be entitled under any bylaws, agreement or otherwise.

Section 6. To the extent permitted by Maryland law, the Corporation shall indemnify and hold harmless the City of Gaithersburg, Maryland, and its officials and employees against any and all expenses, liabilities, suits, damages, claims and judgments in connection with any action, suit or proceeding, civil, criminal, administrative or investigative, relating to or arising out of any action or inaction of the Corporation or its officers, directors or agents. Such right of indemnification shall not be deemed exclusive of any other right or rights to which the City of Gaithersburg may be entitled by law, contract or otherwise.

ARTICLE VIII.

The Corporation is not organized for profit; it shall have no capital stock and shall not be authorized to issue capital stock. The Corporation is a non-membership corporation. Any income of the Corporation shall accrue to the City within the meaning of Section 115 of the Internal Revenue Code.

ARTICLE IX.

In these Articles of Incorporation;

- (1) "City" means the City of Gaithersburg, Maryland.
- (2) "City Manager" means the manager of the City of Gaithersburg, Maryland, or his authorized designee.
- (3) "Corporation" means the Gaithersburg Arts and Monuments Funding Corporation, Inc.

IN WITNESS WHEREOF, I have signed these Articles of Incorporation this _____ day of _____, 2004, and I acknowledge the same to be my act.

SIDNEY A. KATZ, MAYOR

BYLAWS
OF
GAITHERSBURG ARTS AND MONUMENTS FUNDING CORPORATION, INC.

A nonprofit Corporation

ARTICLE I. OFFICES

SECTION 1. PRINCIPAL OFFICE.

The principal office of the Corporation shall be located at City Hall, 31 South Summit Avenue, Gaithersburg, MD 20877

SECTION 2. REGISTERED OFFICE.

The registered office of the Corporation shall be located at City Hall, 31 South Summit Avenue, Gaithersburg, MD 20877. The registered office of the Corporation, required by Maryland Code to be maintained in Maryland, may be, but need not be, the same as the principal office if in Maryland, and the address of the registered office may be changed from time to time by the board of directors of the Corporation.

ARTICLE II. BOARD OF DIRECTORS

SECTION 1. GENERAL POWERS.

The business and affairs of the Corporation shall be managed by its board of directors except as otherwise provided in the Articles of Incorporation or these bylaws. The board of directors directs all aspects of the program, management and finances of the Corporation.

SECTION 2. NUMBER AND TERM OF OFFICE.

As provided in Chapter 6B, Gaithersburg City Code, there shall be at least six (6) members of the Corporation who shall serve for the terms specified in Chapter 6B, Gaithersburg City Code.

SECTION 3. QUALIFICATIONS AND APPOINTMENTS OF DIRECTORS.

As provided in Chapter 6B, Gaithersburg City Code, members are appointed by the Mayor of Gaithersburg and confirmed by the City Council. The Mayor must appoint the members of the board of directors so that:

- (1) One (1) member is, at the time of their appointment, a member of the Olde Towne Advisory Committee;
- (2) One (1) member is, at the time of their appointment, a member of the Arts in Public Places Committee;
- (3) One (1) member is, at the time of their appointment, a member of the Gaithersburg Cultural Arts Advisory Committee;
- (4) Two (2) are at large members capable of representing arts and revitalization interests;
- (5) One or more are ex officio, non-voting members. The Mayor may serve as an ex-officio or designate one or more members of the City Council to serve in that capacity.

The Mayor may reject any person nominated to serve on the board of directors and request additional nominations from the body that nominated the person.

SECTION 4. TERM: REMOVAL, FILLING OF VACANCIES.

- A. Board members selected from the committees outlined in SECTION 3, shall hold office for a term of three years. At-Large members shall hold office for a term of two years.
- B. The Mayor, with approval of the City Council, may remove a member of the board of directors for malfeasance, misfeasance, or nonfeasance or other reason specified in the bylaws of the Corporation.
- C. Any director may resign at any time by giving written notice to the Mayor and the chair of the board. A director's resignation takes effect at the time specified in such notice, and unless otherwise specified therein, the acceptance of such resignation is not necessary to make it effective. The Mayor shall promptly appoint a director to fill the unexpired term in the same manner as outlined in these bylaws and Chapter 6B, Gaithersburg City Code.
- D. A director who fails to attend three board meetings in any year without a reasonable excuse or one, whose actions are deemed detrimental to the Corporation by the board of directors, may be recommended by the board of directors for removal by the Mayor and City Council.

SECTION 5. REGULAR MEETINGS.

- A. Schedule. The board of directors shall meet quarterly (4 times per year) in the principal office of the Corporation for the transaction of such business as may come before the meeting. Regular or special meetings may be scheduled at such times and frequency as the board of directors decide.

- B. Election of Officers. At the board of directors' regular meeting in May of each year, the board of directors shall elect officers who will serve for the following fiscal year commencing July 1st of each year.
- C. Public invitation. All meetings of the board of directors shall be subject to the State Open Meetings Act, except as provided below. The board of directors shall adopt and enforce reasonable rules regulating the conduct and participation of persons attending its meetings, and the videotaping, televising, photographing, broadcasting or recording of its meetings. The presiding officer may have any individual removed from a meeting if he or she determines the behavior of an individual is disrupting an open session.
- D. Each meeting of the board of directors and any committee created by the board is covered by the State Open Meetings Act when the meeting is held to perform a legislative, quasi-legislative, or advisory function as those terms are used in the Act. Meetings covered by the Act may be closed for the reasons specified in the Act.

When carrying out an executive function the board or a committee may meet in closed session or adjourn an open session to a closed session, by majority vote, as specified below.

- (a) Reasons for Closed Meeting. When a meeting is not covered by the Open Meetings Act, the following are the reasons the board of directors may hold a closed meeting:
 - (1) Discuss:
 - (i) the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees or employees; or
 - (ii) any other personnel matter that affects one or more specific individuals;
 - (2) Protect the privacy or reputation of individuals with respect to a matter that is not related to public business;
 - (3) Consider the acquisition by bequest or gift or sale or disposition of real property for a public purpose and matters directly related thereto;
 - (4) Consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the urban district;
 - (5) Consider the investment of its funds;

- (6) Consult with counsel to obtain legal advice;
 - (7) Consult with staff, consultants, or other individuals about pending or potential litigation;
 - (8) Discuss public security;
 - (9) Conduct or discuss an investigative proceeding on actual or possible criminal conduct;
 - (10) Comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter; or
 - (11) Before a contract is awarded or bids are opened, discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the Corporation.
- (b) **Vote; Written Statement.** Unless a majority of the board of directors present and voting vote in favor of closing the session, the board may not meet in closed session.
- (c) **Steps Required.** Before the board of directors meets in closed session, the presiding officer shall:
- (1) Conduct a recorded vote on the closing of the session at a public meeting; and
 - (2) Make a written statement of the reason for closing the meeting and a listing of the topics to be discussed.

SECTION 6. SPECIAL MEETINGS.

Special meetings of the board of directors may be called by or at the request of the chair of the board or any two directors. Public notice of special meetings shall be made as provided under section (7B) of these bylaws.

SECTION 7. NOTICE.

- A. **Notice to the Board.** Notice of each meeting of the board of directors stating that place, day and hour of the meeting shall be given to each director at such director's preferred address at least five days prior thereto by the mailing of written notice by first class mail, or at least one day prior thereto by personal delivery of written notice or by electronic or telephonic, telegraphic, telex or facsimile notice (and the method of such notice need not be the same as to each director). Any director may waive notice of any meeting before, at or after such meeting. The attendance of a director at a meeting shall constitute a waiver of

notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the board of directors need be specified in the notice or waiver of notice of such meeting unless otherwise required by statute.

- B. Public Notice. Notice of regular meetings of the board of directors may be given by delivery to representatives of the news media who regularly report on activities of the Corporation or of the City Government or by posting public notice at a convenient public location at or near the place of the session, or by any other reasonable method, at least five days before the scheduled regular meeting. Notice of special meetings shall be given in a similar fashion as notice of regular meetings, with as much advance notice as is reasonable under the circumstances.

SECTION 8. QUORUM AND VOTING.

A majority of the directors shall constitute a quorum for the transaction of business at any meeting of the board of directors, and the vote of a majority of the directors present in person at a meeting at which a quorum is present shall be the act of the board of directors. If less than a quorum is present at a meeting, a majority of the directors present may adjourn the meeting from time to time with further notice of the time and place for the continuation of the meeting when a quorum shall be present.

SECTION 9. COMPENSATION

Directors shall not receive compensation. Directors may be reimbursed for any ordinary and necessary expenses which they may pay or incur in carrying out Corporation business. A member of the board of directors is not eligible to receive benefits under the City personnel or retirement system for service rendered as a board member.

SECTION 10. EXECUTIVE AND OTHER COMMITTEES.

It is the intent of the Corporation to utilize committees to involve a broad spectrum of the local community in its activities. By one or more resolutions adopted by a majority of the directors, the board may designate from among its members an executive committee and one or more other committees. Each committee will have a board member serving as a liaison and can include persons who are not on the board of directors. To the extent provided in the resolution establishing the committee, committees shall have and may exercise all of the authority of the board of directors as may be specifically delegated to it by the board of directors. The delegation of authority to any committee shall not operate to relieve the board of directors or any member of the board from any responsibility imposed by law. Rules governing procedures for meeting of any committee of the board shall be as established by the board of directors or in the absence thereof, by the committee itself.

SECTION 11. MEETINGS BY TELEPHONE.

Members of the board of directors or any committee thereof may participate in a meeting of a committee by means of conference telephone or similar communications equipment by which all persons participating in the meeting, as well as members of the public, can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

ARTICLE III. OFFICERS AND AGENTS

SECTION 1. NUMBER AND QUALIFICATIONS.

The elected officers of the Corporation shall be a chair of the board, one or more vice-chairs, a secretary and a treasurer. One person may hold more than one office at a time, except that no person may simultaneously hold the offices of chair and secretary. All elected officers must be at least eighteen years old and a member of the board. In addition, the board of directors is authorized to hire, on behalf of the Corporation, an Executive Director whose duties are described below, and such other employees or contractors with titles as deemed appropriate by the board of directors. In lieu of an Executive Director, a City staff member may assume all powers and duties that may be delegated to the Executive Director from time to time within the bylaws. Employees of the Corporation are not City employees, and may not participate in or receive benefits from the City's merit system or retirement system.

SECTION 2. ELECTION AND TERM OF OFFICE.

The elected officers of the Corporation shall be elected by the board of directors annually at the regular May meeting of the board. If the election of officers is not held at such meeting, it shall be held as soon as convenient thereafter. Each officer shall hold office until such officer's successor shall have been duly elected and shall have qualified, or until such officer's earlier death, resignation or removal.

SECTION 3. COMPENSATION.

Directors and officers (other than the Executive Director and any employees or contractors hired by the Corporation) shall not receive compensation or a salary for services provided as a director or officer on behalf of the Corporation.

SECTION 4. REMOVAL.

Any officer or agent may be removed by the board of directors whenever in its judgment the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer shall not in itself create contract

rights. A director may only be removed in accordance with Article II, Sections 3 and 4 of these bylaws.

SECTION 5. VACANCIES.

Any officer may resign at any time, subject to any rights or obligations between the officer and the Corporation, by giving written notice to the chair of the board, to the Executive Director or to the board of directors. An officer's resignation takes effect at the time specified in such notice, and unless otherwise specified therein, the acceptance of such resignation is not necessary to make it effective. A vacancy in any office, however occurring, may be filled by the board of directors for the unexpired portion of the term.

SECTION 6. AUTHORITY AND DUTIES OF OFFICERS.

The officers of the Corporation shall exercise the powers and perform the duties specified below and as may be additionally specified by the chair of the board, the board of directors or these bylaws, except that in any event each officer shall exercise such powers and perform such duties as may be required by law.

A. Chair of the Board. The chair of the board shall:

1. Preside at all meeting of the board of directors;
2. Create ad hoc committees of the board of directors as the chair deems appropriate from time to time and appoint the members and chair of each such committee;
3. Act as a representative of the corporation in community affairs and promote the Corporation's purpose in the community;
4. See that all orders and resolutions of the board are carried into effect;
5. Perform all other duties incident to the office of chair of the board as from time to time may be assigned to the chair by the board of directors.

B. Vice-Chair. The vice-chair shall assist the chair of the board and shall perform such duties as may be assigned to him or her by the chair of the board or the board of directors. The vice-chair shall preside at meetings of the board of directors whenever the chair is absent.

C. Secretary. The secretary shall:

1. Keep the minutes of the proceedings of the board of directors and any committees of the board;
2. See that all notices are duly given in accordance with the provision of these bylaws or as required by law;
3. Be custodian of the corporate records and the seal of the Corporation;
4. Perform such other duties as from time to time may be assigned to such office by the directors. Assistant secretaries, if any, shall have the same duties and powers, subject to supervision by the secretary.

D. Treasurer. The treasurer shall:

1. Be the principal financial officer of the Corporation and have the care and custody of all its funds, securities, evidences of indebtedness and other personal property and deposit the same in accordance with the instructions of the board of directors;
2. Receive and give receipts and acquittance for moneys paid in on account of the Corporation, and pay out of the funds on hand all bills, payrolls, and other just debts of the Corporation of whatever nature upon maturity;
3. Unless there is a comptroller, be the principal accounting officer of the Corporation and as such prescribe and maintain the methods and systems of accounting to be followed, keep complete books and records of account, prepare and file all required local, state and federal tax returns and related documents, prescribe and maintain an adequate system of internal audit, and prepare and furnish to the Executive Director and the board of directors statements of account showing the financial position of the Corporation and the results of its operations;
4. Upon request of the board, make such reports to it as may be required at any time;
5. Perform all other duties incident to the office of treasurer and such other duties as from time to time may be assigned to such office by the chair of the board, the Executive

Director or the board of directors. Assistant treasurers, if any, shall have the same powers and duties, subject to the supervision by the treasurer.

- E. Executive Director. The Executive Director shall, subject to the direction and supervision of the chair of the board and the board of directors:
1. Be the chief executive officer of the Corporation and have general and active control of its affairs and business and general supervision of its officers, agents and employees;
 2. See that all orders and resolutions of the board of directors are carried into effect;
 3. Perform all other duties incident to the office of Executive Director and as from time to time may be assigned to such office by the chair of the board or by the board of directors.

SECTION 7. SURETY BONDS.

The board of directors shall provide for surety bonds or similar instruments to protect against misappropriation of funds by employees of the Corporation responsible for handling the Corporation's funds. The board of directors may require any officer, employee or agent of the corporation to execute to the Corporation a bond in such sums and with such sureties as shall be satisfactory to the board, conditioned upon the faithful performance of such person's duties and for the restoration to the Corporation of all books, papers, vouchers, money and other property whatever kind in such person's possession or under such person's control belonging to the Corporation.

SECTION 8. INSURANCE.

By action of the board of directors, notwithstanding any interest of the directors in such action, the Corporation may purchase and maintain insurance in such amounts as the board of directors deems appropriate to protect itself and any person who is or was a director, officer, employee, fiduciary or agent of the Corporation, or who, while a director, officer, employee fiduciary or agent of the Corporation, against any liability asserted against or incurred by such person in any such capacity arising out of such person's status as such whether or not the Corporation would have the power to indemnify such person against such liability under applicable provisions of law and the Articles of Incorporation and bylaws. Any such insurance may be procured from the insurance company

designated by the board of directors, whether such insurance company is formed under the laws of the state of Maryland or any other jurisdiction.

ARTICLE IV. FINANCES

SECTION 1. FINANCES.

The funds of the Corporation shall be deposited in its name with such banks or trust companies as the board of directors may from time to time designate. All checks, notes, drafts and other negotiable instruments of the Corporation shall be signed by such officers or employees as the board of directors may from time to time designate by resolution. No officers, or agents, or employees of the Corporation, alone or with others, shall have power to make any checks, notes, drafts or other negotiable instruments in the name of the Corporation or to bind the Corporation thereby, except as provided in this Article.

SECTION 2. BUDGET PROPOSALS.

A proposed annual budget shall be prepared by the Executive Director, if any, otherwise the Treasurer and presented for approval to the board of directors. The Corporation shall submit an annual budget to the City Manager of Gaithersburg for review in accordance with the procedures and schedule established by the City Manager.

ARTICLE V. MISCELLANEOUS

SECTION 1. ACCOUNT BOOKS, MINUTES, ETC.

The Corporation shall keep correct books and records of account and shall keep minutes of the proceedings of its board of directors and committees. All books and records of the Corporation may be inspected by any director and by any authorized employee or auditor of the City of Gaithersburg at any reasonable time, upon request to the Executive Director, if any, otherwise the Treasurer.

SECTION 2. ANNUAL REPORT AND ACCOUNTING.

The Corporation shall file with the Mayor and City Council of Gaithersburg, an annual report at the end of its fiscal year. The Corporation will also, in conjunction with the City's Director of Finance, submit an accounting of all corporation funds and a listing of the location thereof. The time for submission of the annual report and accounting shall

be specified by the City Manager. The City reserves the right to require an independent annual audit.

SECTION 3. FISCAL YEAR.

The fiscal year of the Corporation shall begin on July 1 and end on June 30 of each year.

SECTION 4. ETHICS.

- A. The Corporation shall not engage in any collusive practices or acts of self-dealing as described in section 4941(d) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States internal revenue law).
- B. Conflicts of Interest. A director, officer, or employee of the Corporation shall not participate in any corporate matter that affects any property or business in which the director, officer, or employee, or a member of his or her family, holds an economic or fiduciary interest. Family means a spouse, child, parent, or sibling, and the spouse's child, parent, sibling or in-law by marriage. Prior to participating in a matter that would involve a conflict of interest, a director, officer, or employee shall:
 - 1. Immediately inform those charged with approving the transaction on behalf of the Corporation of the conflict of interest;
 - 2. Aid any person charge with making a decision in the relevant matter by disclosing all material facts concerning the conflict of interest; and
 - 3. Not participate in or vote on the matter unless the board of directors by a two thirds vote approves participation in or voting on the matter.
- C. Exceptions to Disqualification in Case of Conflict of Interest. If a conflict of interest disqualifies a director and the disqualification leaves less than a quorum capable of acting, the director may participate or act in the matter if the director discloses the nature and circumstance of the conflict to the board of directors.
- D. Confidential Information. A director, officer, or employee shall not disclose confidential information relating to the Corporation that is not available to the public. A director, officer, or employee

shall not use confidential information for personal gain or the gain of another.

- E. Gifts. A director, officer, or employee shall not solicit or accept a gift from any person if receipt of the gift would influence, or is intended to influence, any business of the Corporation. If a director, officer, or employee receives a gift prohibited by this section, the director, officer or employee shall disclose the gift in writing to the board of directors and dispose of the gift as directed by the board.
- F. Person – Definition. A person includes any entity.
- G. Violation. If a director, officer or employee violates this section, the director, officer, or employee may be removed from the board under Article II, Section 4, or fired, as appropriate.
- H. Loans to Directors and Officers Prohibited. Notwithstanding any other provision in the Articles of Incorporation and bylaws, no loans shall be made by the Corporation to any of its directors or officers, to members of their families (as family is defined in Section 4B hereof), or to any business entity in which the director or officer has more than a five percent (5%) ownership interest.

SECTION 5. PROCUREMENT PRACTICES.

A. Competitive Bids.

1. The Corporation shall exercise reasonable and prudent business practices when purchasing goods and services required by the Corporation. Where practical, informal competitive pricing shall be used.
2. If the estimated value of the procurement exceeds \$10,000, the Corporation shall place a notice of request for bids (RFB) in one or more local newspapers generally covering activities of the Corporation and post the notice in the public offices of the Corporation. An RFB shall contain, at the minimum, a description of the required goods or services, the term of the contract, and the method by which the award will be evaluated and made.
3. Upon receipt of responses to an RFB, the Executive Director or director chairing any committee requesting the procurement and an involved City staff member shall recommend to the board of directors at its next meeting which offer should be accepted. The board of directors shall direct the

Executive Director to negotiate within specified parameters with one or more offerors or direct that more offers be solicited.

4. The board of directors may delegate to a board member, the Executive Director, or City staff member, the authority to accept offers and enter into contracts subject to conditions imposed by the board.

B. Sole Source.

The board of directors may authorize the Executive Director to enter into contracts to obtain the required goods or services without competition if the board makes a written determination that:

1. The specifications for required goods or services are not overly restrictive for the Corporation's needs;
2. Competitive procurement is impractical based on past experience that only a sole source supplier for the particular goods or services is the only reasonably available vendor; and
3. As sole source procurement serves the best interest of the Corporation.

Prior to entering into a sole source contract, the Executive Director must certify to the board of directors that the proposed price is fair and reasonable.

C. Contract Funding.

The Corporation shall not enter into a contract which obligates the Corporation to pay any amount in excess of the unencumbered funds available to the Corporation, or which obligates or encumbers the revenues or assets of the City of Gaithersburg in excess of amounts budgeted and appropriated by the City.

D. Contract Form.

Each contract executed by the Corporation must state that the City of Gaithersburg, its officers and employees are not liable for any obligation of the Corporation under the contract.

SECTION 6. COMPLIANCE WITH STATE PUBLIC RECORDS LAW.

- A. The Executive Director shall generally make all records of the Corporation available for inspection pursuant to the State Public Information Act, Sections 10 - 601 et. seq., Maryland State Government Article Annotated.

- B. Any person denied access to a public record may file a written appeal within 30 days of the denial with the Corporation. The board of directors shall decide the appeal at its next regularly scheduled meeting.
- C. The Executive Director shall establish reasonable charges for the search for, preparation of, and reproduction of public records in accordance with the State Public Information Act.

SECTION 7. AMENDMENTS.

Any amendment to the bylaws must be submitted to the City Council for approval at least 60 days before the Corporation's board of directors takes final action on the amendment. All bylaws must be filed with the City Manager within five (5) working days of adoption.

SECTION 8. SEVERABILITY.

The invalidity of any provisions of these bylaws shall not affect the other provisions hereof, and in such event these bylaws shall be construed in all respects as if such invalid provisions were omitted.